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June 4, 2012

via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation**
Closed Captioning of Internet Protocol-Delivered Video Programming:
Implementation of the Twenty-First Century Communications and Video
Accessibility Act of 2010
MB Docket No. 11-154

Dear Ms. Dortch:

On Thursday, May 31, 2012, Jim House of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Andrew Phillips of the National Association for the Deaf (NAD), Dr. Christian Vogler of the Technology Access Program (TAP) at Gallaudet University, Lise Hamlin of the Hearing Loss Association of America (HLAA), and Blake Reid and Christine Poile of the Institute for Public Representation (IPR) at Georgetown Law (collectively, the "Consumer Groups") met with Bill Lake, Mary Beth Murphy, Steven Broeckert, Alison Neplokh, and Jeffrey Neumann of the Media Bureau and Greg Hlibok, Karen Peltz Strauss, Traci Randolph, Rosaline Crawford, and Eliot Greenwald of the Consumer and Governmental Affairs Bureau regarding petitions for reconsideration and waiver filed by the Consumer Groups, the Consumer Electronics Association (CEA), and the Digital Media Association (DiMA) in the above-captioned proceeding.¹ Mr. Reid also spoke with Mr. Greenwald via telephone on June 1, 2012 regarding the same.

¹ *Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al.* MB Docket No. 11-154 (April 27, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017032686>; *Petition for Reconsideration of the Consumer Electronics Association (CEA)*, MB Docket No. 11-154 (April 30, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017032920>; *Petitions for Temporary Partial Exemption or Limited Waiver of Digital Media Association (DiMA)*, MB Docket No. 11-154 (May 8, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017034801>.

Pursuant to the Consumer Groups petition for reconsideration, we urged the Commission to reconsider its decision to exclude “video clips” from the captioning requirements for IP-delivered programming.² We noted that the plain language of the CVAA requires “video clips” to be captioned and that mentions of “video clips” in the CVAA’s legislative history are best explained, if at all, as references to exemptions to the captioning rules under both the CVAA itself, including the consumer-generated media exemption, and the exemptions in the Commission’s television rules for various short forms of programming. We expressed grave concern that many mainstream news and entertainments outlets routinely distribute many uncaptioned “video clips” online, which will remain inaccessible to people who are deaf or hard of hearing unless the Commission acts quickly to close the “video clips” loophole.

We also encouraged the Commission to reconsider its decision to excuse apparatus manufacturers from any timing or synchronization obligations under section 203 of the CVAA, which we believe are necessary to ensure that captioned programming is actually accessible.³ We agreed with one Commission staff member that it is not necessary at this juncture for the Commission to set precise timing guidelines for apparatuses that render captions so long as the Commission’s rules require that apparatus manufacturers make a good faith effort to ensure that apparatuses consistently render captions on-screen with timing that accurately matches the timing codes of the captions. We also agreed with another Commission staff member that the Commission could address a significant proportion of synchronization problems by clarifying that video programming distributors (“VPDs”) must ensure that any application, plug-in, or device that they provide to consumers must maintain proper synchronization and timing as part of VPDs’ obligations to transmit captions of at least the same quality as the television captions provided for a recording.⁴

Consumer Groups next addressed the two DiMA petitions for waiver of the Commission’s caption rendering and CEA-708 obligations for VPDs. We urged the Commission to reject both petitions because they constitute a gross abuse of administrative process, impermissibly attempting to bend the Commission’s individualized waiver process to seek a blanket waiver for the entire industry. We believe granting DiMA’s petitions would be akin to the Commission’s improper and since-overturned decision in *Anglers for Christ Ministries* and subsequent cases to presumptively grant waivers from the television closed captioning rules without

² *Closed Captioning of Internet Protocol-Delivered Video Programming, Report and Order*, MB Docket No. 11-154, 27 FCC Rcd. 787, 816-18, ¶¶ 44-48 (released January 13, 2012).

³ *Id.* at 853, ¶ 112 & n.453.

⁴ *See id.* at 812-13, ¶ 37.

undertaking a rulemaking and without considering the individualized circumstances of each entity seeking a waiver.⁵

Because nearly all IP-delivered video must be rendered on devices, plug-ins, or applications provided by VPDs, extending the deadlines for rendering would effectively vitiate the six-, twelve-, and eighteen-month deadlines carefully negotiated by the industry and consumer representatives on the Video Programming Accessibility Advisory Committee ("VPAAC") and undo the Commission's careful deliberation and implementation of the captioning requirements for VPDs in this proceeding. And while CEA-708 features may prove challenging for some VPDs to implement, they have been successfully implemented by the industry members in the past. These features are incredibly important to viewers who are deaf or hard of hearing, particularly viewers who are deafblind or who are both deaf or hard of hearing and visually impaired, who often must be able to manipulate captions to be able to view them properly. We agreed to follow up with examples of the importance of these features, which we plan to include in our response to DiMA's filing.

Should DiMA's members seek waivers of the rules for particular aspects of CEA-708 features, they must provide individualized information specific to their own products and services that can be appropriately scrutinized by the Commission and the public. But a blanket waiver for the entire industry is entirely inappropriate and unjustified, particularly given that even some of DiMA's own members explicitly refused to join the petitions. Because the petitions do not accord with the Commission's rules, we encouraged the Commission to treat DiMA's waiver requests as untimely petitions for reconsideration of the Commission's *Report and Order* in this proceeding and dismiss them accordingly.

Finally, we indicated our opposition to the reconsideration sought by CEA of the Commission's decisions regarding the scope of apparatuses covered under section 203 of the CVAA. We also addressed CEA's request to clarify that the January 1, 2014 date for manufacturers to comply with the requirements of section 203 refers to the date that apparatuses are manufactured, rather than the date that devices are imported or sold. We noted that consumers may rightfully expect, based on the Commission's order in this proceeding, that the January 1, 2014 refers to the date that accessible apparatuses will be made available for sale, and that the presence of noncompliant apparatuses on store shelves at that point may lead to serious consumer confusion. We discussed the possibility of manufacturers labeling products to communicate to consumers which devices are compliant or noncompliant after January 1, 2014.

Please contact me if I can provide any further information regarding this presentation.

⁵ See generally *Anglers for Christ Ministries, Inc.*, CGB Docket Nos. CGB-CC-0005 & CGB-CC-0007, 21 FCC Rcd. 10,094 (released Sept. 12, 2006), *reversed*, 26 FCC Rcd. 14,941 (released Oct. 20, 2011).

Respectfully submitted,

/s/

Blake E. Reid, Esq.

June 4, 2010

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